

1 Laurence D. King (SBN 206423)
2 Blair E. Reed (SBN 316971)
KAPLAN FOX & KILSHEIMER LLP
3 1999 Harrison Street, Suite 1560
4 Oakland, CA 94612
Telephone: 415-772-4700
Facsimile: 415-772-4707
Emails: *lking@kaplanfox.com*
breed@kaplanfox.com

6 **KAPLAN FOX & KILSHEIMER LLP**
7 Frederic S. Fox (admitted *pro hac vice*)
Donald R. Hall (admitted *pro hac vice*)
Jason A. Uris (admitted *pro hac vice*)
8 800 Third Avenue, 38th Floor
New York, NY 10022
Telephone: 212-687-1980
Facsimile: 212-687-7714
10 Emails: *ffox@kaplanfox.com*
dhall@kaplanfox.com
juris@kaplanfox.com

12 *Lead Counsel for Lead Plaintiff Stadium*
Capital LLC, Plaintiff David Sherman and the
13 *Proposed Class*

14
15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**
17 **SAN JOSE DIVISION**

18 ASIF MEHEDI, Individually and on Behalf of All
Others Similarly Situated,

19 Plaintiff,

20 v.

21 VIEW, INC. f/k/a CF FINANCE ACQUISITION
22 CORP. II, RAO MULPURI, VIDUL PRAKASH,
HOWARD W. LUTNICK, PAUL PION, ALICE
CHAN, ANSHU JAIN, ROBERT J.
HOCHBERG, CHARLOTTE S. BLECHMAN,
CF FINANCE HOLDINGS II, LLC, CANTOR
FITZGERALD & CO., CANTOR FITZGERALD,
L.P., AND CF GROUP MANAGEMENT, INC.,

23 Defendants.

24 Case No.: 5:21-cv-06374-BLF

25 **CLASS ACTION**

26 **LEAD PLAINTIFF'S REQUEST FOR**
JUDICIAL NOTICE OF NEWLY-
AVAILABLE INFORMATION

27 Judge: Hon. Beth L. Freeman
Courtroom: 3, 5th Floor

1 Lead Plaintiff hereby requests that this Court take judicial notice of the derivative complaint
 2 filed in *Siseles v. Lutnick, et al.*, Case No. 2023-1152-JTL, Verified Class Action Complaint, ECF
 3 No. 9 (Del. Ch. Nov. 20, 2023), attached as Exhibit 1 to the Declaration of Laurence D. King in
 4 Support of Lead Plaintiff's Request for Judicial Notice (the "King Decl.") filed concurrently
 5 herewith (the "Deriv. Compl."), which was unsealed on November 20, 2023.

6 In particular, ¶ 53 of the Deriv. Compl. contains a slide from Cantor Fitzgerald, L.P.'s
 7 ("Cantor") and Cantor Fitzgerald & Co.'s ("CF&Co.") presentation of the results of their due
 8 diligence to CF II's Board (the "Due Diligence Presentation"), which was produced by CF II (k/n/a
 9 View) in response to the derivative plaintiffs' demands for inspection of books and records under
 10 8 Del. C. §220. Deriv. Compl. ¶¶53, 22 fn. 2. The slide is titled "Executive Summary" and states
 11 that in addition to the "\$24.5M liability for an issue identified in IGU's manufactured and sold prior
 12 to June'19" recorded in 2019 (the warranty accrual) for the "Type II Spacer" (the Defect), Cantor
 13 and CF&Co. "have identified an additional \$59mm of potential debt-like items at July '20"
 14 requiring "[a]djustments [that] are mainly comprised of the Type II loss contingency noted above
 15 (\$24.5M)" and other items. Deriv. Compl. ¶53. This information is consistent with and supports
 16 the SAC's allegations because it shows that the CF Defendants had in fact identified "an additional
 17 \$59mm of potential debt-like items at July'20" that were "mainly comprised" of costs attributable
 18 to the Defect yet failed to disclose these costs. *Id.*

19 For the reasons set forth below, consideration of this document is permitted pursuant to the
 20 incorporation-by-reference doctrine, Rule 201 of the Federal Rules of Evidence, and supporting
 21 case law.

22 **I. LEGAL STANDARD**

23 In considering a Rule 12(b)(6) motion to dismiss, courts may consider "documents attached
 24 to the complaint, documents incorporated by reference in the complaint, or matters of judicial
 25 notice — without converting the motion to dismiss into a motion for summary judgment." *U.S. v.*
26 Ritchie, 342 F.3d 903, 908 (9th Cir. 2003). "Courts may take judicial notice of facts that are "not
 27 subject to 'reasonable dispute.'" *Perez v. DXC Tech. Servs. LLC*, No. 17-CV-06066-BLF, 2020 WL
 28 5517276, at *2 (N.D. Cal. Sept. 14, 2020) (Freeman, J.) (citing Fed. R. Evid. 201(b)). Such

1 “[i]ndisputable facts” are those that are either “generally known within the trial court’s territorial
 2 jurisdiction” or “can be accurately and readily determined from sources whose accuracy cannot
 3 reasonably be questioned.” *Perez*, 2020 WL 5517276, at *2; Fed. R. Evid. 201(b). Public records,
 4 including judgments and other publicly filed documents, are proper subjects of judicial notice. *See*,
 5 *e.g.*, *United States v. Black*, 482 F.3d 1035, 1041 (9th Cir. 2007) (“[Courts] may take notice of
 6 proceedings in other courts, both within and without the federal judicial system, if those
 7 proceedings have a direct relation to matters at issue.”); *Romero v. Flowers Bakeries, LLC*, No. 14-
 8 CV-05189-BLF, 2016 WL 469370, at *3 (N.D. Cal. Feb. 8, 2016) (granting request for judicial
 9 notice of complaints filed in separate action “[b]ecause the exhibits are court records, which are
 10 judicially noticeable . . . and Defendant contests neither their authenticity nor their accuracy”)
 11 (Freeman, J.); *In re Qualcomm Antitrust Litig.*, 292 F. Supp. 3d 948, 964 (N.D. Cal. 2017) (taking
 12 judicial notice of complaints filed in other actions); *Rothman v. Gregor*, 220 F.3d 81, 92 (2d Cir.
 13 2000) (taking judicial notice of a filed complaint as a public record). “Unlike rule-established
 14 judicial notice, incorporation-by-reference is a judicially created doctrine that treats certain
 15 documents as though they are part of the complaint itself.” *Khoja v. Orexigen Therapeutics, Inc.*,
 16 899 F.3d 988, 1002 (9th Cir. 2018).

17 II. ARGUMENT

18 The contents of the Due Diligence Presentation are judicially noticeable for two key
 19 reasons. *First*, the Due Diligence Presentation was incorporated by reference into the SAC. *Id.*
 20 ¶ 64 (“Before reaching its decision, the CF II Board reviewed the results of the due diligence
 21 conducted by its management, employees of Cantor and CF II’s advisors . . .”); *see also* ¶¶ 57-60,
 22 39-40. As such, the Court may take into account the Due Diligence Presentation. *See, e.g.*, *Perez*,
 23 2020 WL 5517276 at *2 (finding Amended Private Attorneys General Act Notice was incorporated
 24 by reference where complaint alleged “Plaintiff has complied with the procedures for suit specified
 25 in the Labor Code section 2699.3.”); *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir.
 26 2010) (the Ninth Circuit has “extended the doctrine of incorporation by reference to consider
 27 documents in situations where the complaint necessarily relies upon a document or the contents of
 28 the document are alleged in a complaint, the document’s authenticity is not in question and there

1 are no disputed issues as to the document’s relevance.”); *United States v. Ritchie*, 342 F.3d 903, 908
 2 (9th Cir. 2003) (“Even if a document is not attached to a complaint, it may be incorporated by
 3 reference into a complaint if the plaintiff refers extensively to the document or the document forms
 4 the basis of the plaintiff’s claim.”); *Ali v. Intel Corp.*, No. 18-CV-03981-LHK, 2018 WL 5734673,
 5 at *3 (N.D. Cal. Oct. 31, 2018) (taking judicial notice of documents “incorporated into the
 6 complaint by reference”). And, because the Due Diligence Presentation was incorporated by
 7 reference, the Court “may assume [its] contents are true for purposes of a motion to dismiss under
 8 Rule 12(b)(6).” *Khoja*, 899 F.3d at 1003, 1015 (9th Cir. 2018) (internal citation omitted).

9 **Second**, even if the results of Cantor and CF&Co.’s due diligence were not incorporated by
 10 reference (they were), consideration of the Due Diligence Presentation is proper because courts
 11 may “take judicial notice of documents on which allegations in the complaint necessarily rely, even
 12 if not expressly referenced in the complaint, provided that the authenticity of those documents are
 13 not in dispute.” *Browning v. Am. Honda Motor Co.*, 549 F. Supp. 3d 996, 1004 (N.D. Cal. 2021)
 14 (citing *Golub v. Gigamon Inc.*, 372 F. Supp. 3d 1033, 1043 (N.D. Cal. 2019), *aff’d*, 994 F.3d 1102
 15 (9th Cir. 2021), and *aff’d*, 847 F. App’x 368 (9th Cir. 2021)); *see also*; *United Specialty Ins. Co. v.*
 16 *Certain Underwriters at Lloyd’s of London*, No. 18-CV-07504-SK, 2019 WL 7810813, at *2 (N.D.
 17 Cal. Mar. 19, 2019) (taking judicial notice of insurance policy “because it is integral to the
 18 allegations presented in the Complaint and because neither party disputes its authenticity”) (citing
 19 *Tercica, Inc. v. Insmed Inc.*, No. C 05–5027 SBA, 2006 WL 1626930, at *8 (N. D. Cal. June 9,
 20 2006) (observing that “a court may consider documents alleged in a complaint and essential to a
 21 plaintiff’s allegations” and may even “take judicial notice of documents on which allegations in the
 22 complaint *necessarily* rely, even if not expressly referenced in the complaint, provided that the
 23 authenticity of those documents is not in dispute.”)) (emphasis in original); *Cloud v. Brennan*,
 24 436 F. Supp. 3d 1290, 1303 (N.D. Cal. 2020) (noting that a Court may take judicial notice of
 25 document on which allegations in the complaint necessarily rely and noting “[g]iven that both
 26 parties rely on Cloud’s EEO filings, they are likely essential to her claims here.”).

27 Moreover, given that CF II (n/k/a View) itself produced the Due Diligence Presentation
 28 (which is Cantor’s and CF&Co.’s *own* presentation) in response to a books and records inspection

1 demand made pursuant to 8 Del. C. § 220, its authenticity cannot be subject to “*reasonable* dispute”
 2 *In re Qualcomm*, 292 F. Supp. 3d at 964 (emphasis added) (citing *Lee v. City of L.A.*, 250 F.3d 668,
 3 689 (9th Cir. 2001) (“A court may take judicial notice of matters of public record But a court
 4 may not take judicial notice of a fact that is subject to reasonable dispute.” (internal quotation marks
 5 omitted)), *overruled on other grounds by Galbraith v. Cty. of Santa Clara*, 307 F.3d 1119 (9th Cir.
 6 2002); *Khoja*, 899 F.3d at 999 (9th Cir. 2018) (a court may take judicial notice of “an adjudicative
 7 fact if it is ‘not subject to reasonable dispute.’”) (quoting Fed. R. Evid. 201(b)); *Flowers Bakeries,*
 8 *LLC*, 2016 WL 469370, at *3 (similar).

9 **III. CONCLUSION**

10 For all of the foregoing reasons, Lead Plaintiff respectfully requests that the Court consider
 11 Exhibit 1 to the King Decl. when deciding defendants’ motions to dismiss the SAC.

12 Respectfully submitted,

13 **KAPLAN FOX & KILSHEIMER LLP**

14 By: /s/ Laurence D. King
 15 Laurence D. King

16 Laurence D. King (SBN 206423)
 17 Blair E. Reed (SBN 316971)
 18 1999 Harrison Street, Suite 1560
 19 Oakland, CA 94612
 Telephone: 415-772-4700
 Facsimile: 415-772-4707
lking@kaplanfox.com
breed@kaplanfox.com

20 **KAPLAN FOX & KILSHEIMER LLP**

21 Frederic S. Fox (admitted *pro hac vice*)
 22 Donald R. Hall (admitted *pro hac vice*)
 Jason A. Uris (admitted *pro hac vice*)
 23 800 Third Avenue, 38th Floor
 New York, NY 10022
 Telephone: 212-687-1980
 Facsimile: 212-687-7714
ffox@kaplanfox.com
dhall@kaplanfox.com
juris@kaplanfox.com

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 26 *Lead Counsel for Lead Plaintiff Stadium Capital LLC,*
 Plaintiff David Sherman and the Proposed Class

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